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**Resolve, Regarding Legislative Review of Portions of Chapter
29: Standards for Water Quality Protection, Section 6, Buffer
Requirement, a Major Substantive Rule of the Department of
Agriculture, Food and Rural Resources, Board of Pesticides Control.**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Adoption. Resolved: That final adoption of portions of Chapter 29: Standards for Water Quality Protection, Section 6, Buffer Requirement, a provisionally adopted major substantive rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This resolve provides for legislative review of portions of Chapter 29: Standards for Water Quality Protection, Section 6, Buffer Requirement, a major substantive rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control.

BASIS STATEMENT FOR THE FINAL ADOPTION OF AN AMENDMENT TO CHAPTER 29—STANDARDS FOR WATER QUALITY PROTECTION

Chapter 29 of the Board's rules describes standards for protecting surface water. This chapter establishes a 50-foot setback from surface water for mixing and loading of pesticides and sets forth requirements for securing containers during transit and cleaning up spills occurring within the setback zone. The proposed amendments add two sections to this rule: Section 5 establishes restrictions on pesticide applications to control browntail moth near marine waters; and Section 6 requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near surface waters, including lakes, ponds, rivers, streams, certain wetlands and estuarine/ marine waters. Section 6 also contains a provision for treating arthropod vectors of human diseases and a mechanism for the Board or its staff to grant variances.

There were no comments on Section 5. In the spring of 2006, the Maine Legislature enacted restrictions on the use of insecticides to control the browntail moth, similar to those in proposed Section 5. The current law sunsets on March 31, 2008. The Board decided it is appropriate to continue those safeguards in its rules in order to minimize risks to aquatic organisms. Consequently, it adopted the new Section 5 of Chapter 29.

There were seven comments on Section 6—three oral and four written. One of the three oral comments was not in favor of buffers for lawn care, one was in favor of buffers for all bodies of water and the third requested clarification as to what constitutes a “spot” application and brought up the issue of stinging insects. Written comments were received from cranberry and blueberry growers, a railroad and a lawn care applicator. These comments were not in favor of a set buffer of 25 feet in the proposed rule. The cranberry growers pointed out that man-made bogs are in the nature of wetlands and requested an exemption. The blueberry growers made the point that, in some cases, the 25-foot buffer may not be adequate. The railroad commented that their 10-foot buffer works to keep the tracks unfouled and in compliance with the federal and state standards for railroad tracks. The lawn care individual, who provided both oral and written comments, reiterated that he was not in favor of set buffers.

The Board decided one of the best protections of surface waters from pesticide runoff is to limit broadcast pesticide applications directly adjacent to these bodies of water. Accordingly, it adopted the 25-foot buffer, with the variance process to allow for regulatory relief in cases such as rights-of-way treatment. Stinging insects were added to the list of exemptions to allow for European Fire Ant control and an exception for man-made wetlands designed and managed for agricultural purposes was added.

The rule was provisionally adopted by the Board at its meeting on January 25, 2008, pending legislative review. The Board now finally adopts the rule as authorized by the Legislature pursuant to LR 3509, signed by the Governor on March 17, 2008.

Impact on Small Business

In accordance with 5 MRSA §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.